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12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 ANITA SANHUEZA , WENDY
15 GUZMAN, and DANIELLE JOHNSON,
Individually and on behalf of all others
similarly situated,

16 Plaintiffs,

17 v.

18 LINCOLN TECHNICAL INSTITUTE,
19 INC., LINCOLN EDUCATIONAL
SERVICES CORPORATION,
20 EUPHORIA ACQUISITION, LLC, NEW
ENGLAND INSTITUTE OF
21 TECHNOLOGY AT PALM BEACH,
INC., SHAUN E. MCALMONT, CESAR
RIBEIRO, and BRIAN K. MEYERS,

22 Defendants.

Case No. 2:13-cv-02251-JAD-VCF

**STIPULATED PROTECTIVE ORDER
GOVERNING CONFIDENTIAL
INFORMATION**

23 Pursuant to Federal Rule of Civil Procedure 26(c), Named Plaintiffs, ANITA
24 SANHUEZA, WENDY GUZMAN and DANIELLE JOHNSON ("Plaintiffs") and Defendants,
25 Lincoln Technical Institute, Inc.; Lincoln Educational Services Corporation; Euphoria
26 Acquisition, LLC; New England Institute of Technology at Palm Beach, Inc.; Shaun E.
27 McAlmont; Cesar Ribeiro; and Brian K. Meyers ("Defendants"), (collectively, the "Parties"),

1 hereby submit this proposed Stipulated Protective Order for the purpose of ensuring that
2 confidential information exchanged during discovery or potentially submitted to the Court by the
3 Parties is not disclosed to or used for any purpose outside of the above captioned lawsuit.
4 Accordingly, the Parties hereby stipulate, subject to approval and entry by the Court, to the
5 following:

6
7 **I. Definitions and Terms**

8 1. "Confidential Information" means any document, information, or material
9 involving or containing trade secrets, confidential business or financial information, or any
10 portion of a third party's personnel file, which the producing party or protected person reasonably
11 believes not to be in the public domain and reasonably believes contains a proprietary or
12 confidential information, or information to which an individual or company has an established
13 and legitimate right to privacy or confidentiality. The information generally includes, but is not
14 limited to, information concerning Defendants' corporate financial information, other confidential
15 business information, dates of birth and social security numbers of parties to this litigation, and
16 any other information reasonably believed by the designating party as worthy of protection as
17 privileged. It may also include, as needed, similar information of third-parties.

18
19 2. Confidential Information. In providing or revealing discovery materials, any party
20 may designate as "CONFIDENTIAL" the whole or any part of discovery material which
21 constitutes proprietary or personal data, personal information, personal identifying information,
22 financial information, contracts and/or similar sensitive business or personal information or data
23 which the designating party in good faith believes in fact is confidential or that unprotected
24 disclosure might result in personal, character or economic injury, and which is not publicly
25 known and cannot be ascertained from an inspection of publicly available documents, materials,
26 or devices.
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1 3. "Disclosed" is used in its broadest sense and includes, *inter alia*, directly or
2 indirectly shown, divulged, revealed, produced, described, transmitted or otherwise
3 communicated, in whole or in part.

4 4. "Discovery Material(s)" means any Confidential Information presented in
5 documents, answers to interrogatories, responses to requests for admission, deposition testimony,
6 deposition transcripts and exhibits, other responses to requests for information and/or written
7 information, whether produced voluntarily or involuntarily, in response to discovery requests in
8 this litigation by any party.

10 5. Use of Confidential Information in Depositions. Any party shall have the right to
11 use Confidential Information during depositions. However, to the extent a third party deponent is
12 present, that third party deponent shall be required to execute a copy of the form Attachment A.
13 At any deposition session, upon inquiry with regard to the content of a document marked
14 "CONFIDENTIAL" or whenever counsel for a party deems that the answer to the question may
15 result in the disclosure of Confidential Information, or whenever counsel for a party deems that
16 the answer to any question has resulted in the disclosure of Confidential Information, the
17 deposition (or portions thereof) may be designated by the affected party as containing
18 Confidential Information subject to the provisions of this Order. When such designation has been
19 made, the testimony or the transcript of such testimony shall be disclosed only to those parties
20 described in Section 6 and to the testifying third party deponent, and the information contained
21 therein shall be used only as specified in this Stipulation and Order. Moreover, all originals and
22 copies of deposition transcripts that contain Confidential Information shall be prominently
23 marked "CONFIDENTIAL" on the cover thereof and, if and when filed with the Court, the
24 portions of such transcript so designated shall be filed under seal. Counsel must designate
25 portions of a deposition transcript as "CONFIDENTIAL" within thirty (30) days of receiving the
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1 transcript. Designations may be made by letter to counsel of record or on the record during the
2 deposition. Portions of deposition transcripts so designated shall be treated as Confidential
3 Information by the Parties as set forth herein. During the thirty (30) day period, the entire
4 transcript shall be treated as confidential. If no confidential designations are made within the
5 thirty (30) day period, the entire transcript shall be considered non-confidential.

6
7 6. Disclosure of Confidential Information. Confidential Information produced
8 pursuant to this Order may be disclosed or made available only to the Court and to the persons
9 designated below:

- 10 (a) Retained counsel and in-house counsel for a party (including attorneys associated
11 with the law firm of counsel and the paralegal, clerical, and secretarial staff
12 employed by such counsel);
13
14 (b) A party, or officers, directors, and employees of a party deemed necessary by
15 counsel to aid in the prosecution, defense, or settlement of this action;
16
17 (c) Outside experts, investigators, agents or consultants (together with their clerical
18 staff) retained by such counsel to assist in the prosecution, defense, or settlement
19 of this action;
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21 (d) Clerical and data processing personnel involved in the production, reproduction,
22 organizing, filing, coding, cataloging, converting, storing, retrieving, and review of
23 discovery material, to the extent reasonably necessary to assist a party or its
24 counsel in these proceedings;
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26 (e) This Court and its staff and any other court, tribunal or dispute resolution officer
27 duly appointed, chosen or assigned in connection with this lawsuit;
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29 (f) Court reporter(s) and videographer(s) employed in this action;

1 (g) Persons whom are contacted by counsel for a party or investigators or other
2 personnel retained by such counsel for the purposes of gathering information either
3 for the defense or prosecution of this case, to the extent that a good faith belief
4 exists that disclosure of such confidential information is helpful to that information
5 gathering process and

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7 (h) Any other person as to whom the parties in writing agree or that the Court in these
8 proceedings designates.

9 Any person to whom Confidential Information is disclosed pursuant to subparts (a), (b),
10 (c), (d), (e) or (f) or (g) or (h) of paragraph 6 shall be advised that the Confidential Information is
11 being disclosed pursuant to an Order of the Court, that the information may not be disclosed by
12 such person to any person not permitted to have access to the Confidential Information pursuant
13 to this Protective Order, and that any violation of this Protective Order may result in the
14 imposition of such sanctions as the Court deems proper. Any person to whom Confidential
15 Information is disclosed pursuant to subpart (c) or (g) or (h) of paragraph 6 shall also be required
16 to execute a copy of the form Attachment A.
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18 7. "Document" is defined as the term is used in Federal Rule of Civil Procedure 34.

19 8. "Under Seal" is defined as sealing confidential documents consistent with the
20 procedure laid out by LR 10-5(b) of the Local Rules for the District of Nevada. In the event that
21 the court publishes a new procedure for the filing of documents under seal, the Parties may follow
22 said published procedure.
23

24 **II. Types of Materials that May be Designated as Confidential**

25 Any Discovery Material or other documents, information, or materials may be designated
26 by a producing party as Confidential under this Order. The assertion of this designation of
27 "Confidential" shall constitute a representation to the Court that counsel for the producing party
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1 or protected person believes in good faith that the material so designated constitutes Confidential
2 Information as defined in this Order. Except with the prior written consent of the producing party
3 or by court order or as otherwise compelled by force of law, no Discovery Materials or other
4 documents, information, or materials stamped "Confidential" may be disclosed to any person
5 except as permitted in Section IV below.

6
7 **III. Designation of Discovery Materials as Confidential**

8 A producing party may designate as confidential Discovery Materials containing
9 Confidential Information by stamping or otherwise marking the designated material as
10 "Confidential." and producing and listing it on the log. Each Party shall maintain a log for the
11 documents they have produced that have been designated "Confidential," and produce an updated
12 log, containing all designations, when producing documents or information that are designated
13 "Confidential." The fact that a document is stamped "Confidential" by one party shall not be
14 construed as an admission by any other party that such document is confidential, nor shall it limit
15 or preclude the right of any party to object to the "Confidential" designation and to file any
16 appropriate motion(s) to determine the propriety of such designation. If the producing party
17 inadvertently fails to stamp or otherwise appropriately designate or list certain documents,
18 material, or information as "Confidential" upon their production or disclosure, such inadvertent
19 failure to designate shall not constitute nor be deemed a waiver of a subsequent claim of protected
20 treatment under this Order.
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23 Any disclosed documents that are not appropriately stamped "Confidential," may be filed
24 in the normal course, subject to the United States District Court's rules regarding redaction of
25 personal identifying information. The parties agree not to stamp documents as "Confidential"
26 merely because they contain social security numbers or dates of birth, but agree to treat dates of
27 birth and social security numbers as Confidential under this Order and shall redact the same from
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1 all filings. The parties will not be required to comply with Section V.5. of this Order with respect
2 to documents or testimony with dates of birth and social security numbers, but rather should
3 redact such items before filing.

4 **IV. Permissible Use of "Confidential" Information, Documents, or Materials**

5 Notwithstanding section II, documents stamped "Confidential" may only be disclosed to
6 the persons designated in paragraph 6 as well as: (i) the Parties; (ii) all attorneys representing the
7 Parties in this matter; (iii) para-professionals, secretaries, and other non-attorney personnel that
8 are employed by firms or by individual attorneys representing the Parties in this matter but only
9 to the extent that disclosure to such person(s) is necessary in order for them to assist attorneys in
10 connection with this matter; (iv) witnesses in advance of their planned deposition or court
11 testimony but only for the purposes of preparing for the same and if they execute a copy of the
12 form at Attachment A; and (v) the court and all court personnel, including stenographers
13 employed to record and transcribe testimony given upon sworn statement, deposition, and/or trial.
14 To the extent such Confidential information may be disclosed to court personnel or filed with the
15 Court it may, upon a showing sufficient to satisfy the requirements of the Court concerning sealed
16 documents, be done Under Seal.

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19 Persons obtaining access to Discovery Materials or other documents, information, or
20 materials stamped "Confidential" pursuant to this Order shall use the information only for the
21 purpose of this matter, through and including appeal(s) and shall not use such information for any
22 other purpose, including business, governmental, commercial, administrative, or judicial
23 proceedings, unless required by court order or being compelled by force of law. If any person
24 receiving information covered by this Protective Order is: (a) subpoenaed in another action or
25 proceeding; (b) served with a request or demand in another action to which he, she, or it is a
26 party; or (c) served with any other legal process by one not a party to this action, seeking
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1 information designated as "Confidential" pursuant to this Order, the subpoenaed party shall: (i)
2 promptly give written notice, by hand or facsimile transmission, within forty-eight (48) hours of
3 receipt of such subpoena, request, demand, or legal process to the party that produced or
4 designated the material as "Confidential"; and (ii) respond to any effort to enforce such subpoena,
5 request, demand, or other legal process by setting forth the existence of this Protective Order.
6
7 The subpoenaed party or anyone else subject to this Order shall be under no obligation to take any
8 other action or measures to preserve the confidentiality of any such information in connection
9 with such subpoena, request, demand, or legal process. Nothing herein shall be construed as
10 requiring the subpoenaed party or anyone else covered by this Order to challenge or appeal any
11 order requiring production of Confidential Information, to subject itself to any penalties for
12 non-compliance with any legal process or order, or to seek any relief from the court.

13 **V. Miscellaneous**

14
15 1. The provisions of this Protective Order shall not terminate at the resolution of this
16 matter.

17 2. Within one hundred and twenty (120) days after the final conclusion of this matter
18 documents stamped "Confidential" and all copies of such documents, other than exhibits of
19 record, shall be destroyed or returned to the party who produced the documents and designated
20 them as "Confidential."

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22 3. Nothing in this Protective Order shall prevent any party or other person from
23 seeking modification of this Protective Order or from objecting to discovery that it believes to be
24 otherwise improper. This Protective Order, however, shall not be modified absent an order of the
25 court or the written agreement of all the Parties hereto.

26 4. Any party may dispute, in good faith, a designation of Confidential status as to any
27 particular documents or testimony by advising, in writing, counsel making that designation of that
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1 dispute. The party seeking to preserve that Confidential designation must then make a motion to
2 the Court for a protective order to maintain the confidential status of such documents or testimony
3 within 21 days of the mailing of such written dispute. The party seeking to preserve that
4 Confidentiality designation shall bear the burden of establishing that confidential status is
5 appropriate for the disputed documents or testimony, the confidential status of the same will be
6 maintained until the Court rules on such dispute.
7

8 5. Any party that seeks to submit or file Confidential documents or testimony to the
9 Court shall provide written notice as soon as practical to the party designating the same as
10 Confidential. Notice in this paragraph shall be achieved by counsel for the party desiring to
11 submit the Confidential documents sending a letter via email and First-Class mail to counsel for
12 the party designating the same as Confidential. If the Court's procedures allow the filing of
13 those Confidential material under seal without a motion, they shall be so submitted under seal. If
14 the Court's procedures do not allow such a filing, and require an application to the Court and the
15 issuance of a Court Order to either allow such an under seal filing or maintain the same, the party
16 designating the Confidential documents or testimony shall have the burden of promptly making
17 such a motion and securing such an Order from the Court. The party wishing to submit or file the
18 documents or testimony marked Confidential shall not do so until direction from the Court on the
19 motion to file under seal and shall insert redacted documents or testimony or blank placeholders
20 with the filings or submissions without the Confidential material. If such a motion and order is
21 required prior to the filing of such Confidential materials or testimony with the Court under seal,
22 the party seeking to maintain the Confidential status of the same shall make that motion within
23 ten (10) business days of receipt of the written notice that such a motion needs to be made. All
24 deadlines for the submission of motions or other documents to the Court shall allow an additional
25 fifteen (15) business days past that deadline for the submission of Confidential testimony and
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documents under seal in connection with the same, via a motion to seal such documents, unless the Court's procedures allows the initial filing of those Confidential materials without the need for such a motion. If that fifteen (15) business day period passes without the submission of such a motion to file those Confidential materials under seal, the party seeking to file those materials with the Court may do so without the materials being sealed but only after contacting via phone the counsel for the other party and verifying that the party will not be making a motion to file the Confidential materials under seal.

DATED this 17th day of June, 2014.

LEON GREENBERG PROFESSIONAL
CORPORATION

JACKSON LEWIS P.C.

/s/ Leon Greenberg

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Attorneys for the Defendants

ORDER

IT IS SO ORDERED June 18, 2014.


United States District Judge
United States Magistrate Judge

Attachment A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the Court on _____
[date] in the case of *Sanhueza et al. v. Lincoln Technical Institute, et al.*, Case No. 2:13-cv-
02251-JAD-VCF. I agree to comply with and to be bound by a the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order. I further agree to
submit to the jurisdiction of the United States District Court, District of Nevada, for the purpose
of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings
occur after termination of this action.

I hereby appoint [print or type full name] of _____ [print or type full
address and telephone number] as my Nevada agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____